

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

Case No. : 00-00515-CIV-UNGARO-BENAGES
MAGISTRATE JUDGE BROWN

FEDERAL TRADE COMMISSION,)
)
)
 Plaintiff,)
)
 v.)
)
)
 ADVANCED PUBLIC COMMUNICATIONS)
 CORPORATION, a corporation, and)
 MICHAEL PORTMAN and JAMES L.)
 BIANCO, JR., a.k.a. John Taylor,)
 individually and as officers of the corporation,)
 and MICHAEL DRUCKER, a.k.a. MICHAEL)
 DAVIS, individually)
)
 Defendants.)
)

**ORDER OF DEFAULT JUDGMENT, PERMANENT INJUNCTION
AND CONSUMER REDRESS AS TO DEFENDANTS ADVANCED PUBLIC
COMMUNICATIONS CORP., JAMES L. BIANCO, Jr., AND MICHAEL DRUCKER**

WHEREAS, plaintiff, the Federal Trade Commission (“FTC” or “Commission”), filed its Original Complaint and First Amended Complaint for permanent injunction and other relief pursuant to Sections 5, 13(b) and 19 of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. §§ 45, 53(b) and 57b on February 7, and June 16, 2000 respectively, charging that defendants Advanced Public Communications Corp. (“Advanced Public”), James L. Bianco, Jr. and Michael Drucker (collectively the “Default Defendants”), and defendant Michael Portman, engaged in unfair or deceptive acts or practices in violation of Section 5 of the FTC Act, 15 U.S.C. § 45, and the

Commission's Trade Regulation Rule entitled "Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures" ("Franchise Rule"), 16 C.F.R. Part 436, in connection with the sale of payphone business opportunities.

WHEREAS each of the Default Defendants failed to answer or otherwise respond in this matter, and default was entered by the Clerk of Court as to each Default Defendant.

WHEREAS the Commission moved for Default Judgment against each of the Default Defendants on January 19, 2000.

THEREFORE, having considered the Commission's Motion and evidence, the Commission is hereby GRANTED Default Judgment with respect to Defendants Advanced Public Communications Commission, James L. Bianco, Jr. and Michael Drucker. It is further ORDERED, ADJUDGED AND DECREED as follows:

FINDINGS

1. This Court has jurisdiction over the subject matter and the Default Defendants pursuant to 28 U.S.C. §§ 1331 and 1337(a), and 15 U.S.C. § 53(b).
2. Venue is proper as to all parties in the Southern District of Florida.
3. The activities of the Default Defendants identified in Plaintiff's Complaint are in or affecting commerce, as defined in Section 4 of the FTC Act, 15 U.S.C. § 44.
4. The action was instituted by the Commission under Sections 5(a) and 13(b) of the FTC Act. The Commission seeks permanent injunctive relief, and monetary consumer redress for unfair and deceptive acts and practices by the Default Defendants in connection with their deceptive and unfair payphone business opportunity scheme. Pursuant to 15 U.S.C. § 53(b), the Commission has authority to seek the relief it has requested.

5. The Complaint states a claim upon which relief may be granted against the Default Defendants, under Sections 5(a)(1), 13(b) and 19 of the FTC Act, 15 U.S.C. §§ 45(a), 53(b).

6. Defendants Advanced Public, Bianco and Drucker were served by personal service on February 10, August 4 and April 13, 2000 respectively, pursuant to Rule 4 of the Federal Rules of Civil Procedure.

7. Each of the Default Defendants failed to file an answer or other response to the Complaint within the time set forth in Rule 12(a) of the Federal Rules of Civil Procedure.

8. The clerk of the court, pursuant to Rule Federal Rule 55(a), entered default against Defendants Advanced Public, Bianco, and Drucker on May 10, October 17, and June 13, 2000 respectively. None of the Default Defendants have contested the entry of default, as provided for in Federal Rule 55(c).

9. None of the Default Defendants are infants or incompetent.

10. The Default Defendants have defrauded consumers by promoting a bogus business opportunity involving the sale of payphone routes and equipment throughout the nation. They sold their scheme to consumers by making false earnings claims, as well as misrepresentations about the quality of their payphone equipment, the proven profitability of their “pre-selected” phone locations, and the continued guidance and support defendants would provide each purchaser as he or she built this alleged business venture. The Default Defendants also promised consumers pre-selected and profitable sites that did not exist, as well as assistance obtaining necessary licenses and long-distance contracts. Finally, they misrepresented to consumers that the payphone equipment they purchased would arrive quickly, usually within 14 to 45 days of purchase.

11. In reality, the payphone equipment never was delivered to the consumers, locations were not already selected and available, and no help was provided with any aspect of the business once the consumers' money was in defendants' hands. Thus, the astronomical profits promised the consumers never materialized. The consumers lost their initial investment, and often lost additional fees they paid to location marketing companies or for business licenses they obtained to ready themselves for this illusory business venture. Defendants failed to respond to consumers' requests for assistance, and ignored consumers' complaints about nondelivery and eventual demands for refunds.

12. Default Defendants have violated Section 5 of the FTC Act, 15 U.S.C. § 45(a) with their false and deceptive statements.

13. Default Defendants have also violated the FTC's Franchise Rule by failing to provide prospective franchisees with a complete and accurate basic disclosure statement; by failing to provide an earnings claim document; and by failing to include the required disclosures for the earnings claims they make in their classified advertisements.

14. Defendant Drucker directly participated in each of the deceptive and unfair acts and practices described above, and defendant Bianco, as sole officer and director of Advanced Public, had authority to control the same;

15. Both defendants Drucker and Bianco are individually liable for redress for the consumer injury caused by the deceptive and unfair acts and practices set forth above. Drucker was at a minimum recklessly indifferent to those acts and practices, and Bianco was the sole officer and director of Advanced Public and therefore had authority control the same.

16. The Default Defendants are likely to continue to engage in the activities alleged in the Amended Complaint or otherwise violate Section 5 of the FTC Act unless they are prohibited from selling franchises, business opportunities, business ventures, payphone business opportunity, or income-generating products or services.

11. This Order is in addition to, and not in lieu of, any other civil or criminal remedies that may be provided by law.

12. Entry of this Default Judgment and Permanent Injunction is in the public interest.

DEFINITIONS

For the purpose of this Order, the following definitions shall apply:

1. “Asset” means any legal or equitable interest in, or right or claim to, any real and personal property, including without limitation, chattels, goods, instruments, equipment, fixtures, general intangibles, leaseholds, mail or other deliveries, inventory, checks, notes, accounts, credits, contracts, receivables, shares of stock, and all cash, wherever located.

2. “Business Venture” means any written or oral business arrangement, however denominated, whether or not covered by the Franchise Rule, which consists of the payment of any consideration for:

a. The right or means to offer, sell, or distribute goods or services (whether or not identified by a trademark, service mark, trade name, advertising, or other commercial symbol); and

b. The promise or provision of assistance to any person in connection with: (1) the establishment, maintenance, or operation of a new business; or (2) the entry by an existing business into a new line or type of business, including, but

not limited to, referrals to one or more persons providing location services.

3. The “Franchise Rule” or “Rule” means the FTC Trade Regulation Rule entitled “Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures,” 16 C.F.R. Part 436.

4. “Franchise” and “Franchisor” are defined as those terms are defined in Sections 436.2(a) and (c) of the Franchise Rule, 16 C.F.R. §§ 436.2(a) and (c), and include “business opportunity ventures” as defined in Sections 436.2(a)(1)(ii) and (2) of the Rule, and discussed in the FTC’s Final Interpretive Guide for the Franchise Rule, 44 Fed. Reg. 49966-68 (August 24, 1979). The term “franchise” in this Order shall also encompass any successor definition of “franchise,” “business opportunity” and “business opportunity venture” in any future trade regulation rule or rules that may be promulgated by the Commission to modify or supersede the Franchise Rule, in whole or part, from the date any such rule takes effect.

5. “Person” means a natural person, organization or other legal entity, including a corporation, partnership, proprietorship, association, or cooperative, or any other group or combination acting as an entity.

6. “Telemarketing” means the advertising, offering for sale, or sale of any good or service to any person by means of telephone sales presentations, either exclusively or in conjunction with the use of other advertising.

7. “UFOC format” is defined as the Uniform Franchise Offering Circular disclosure format which has been adopted by the North American Securities Administrators’ Association and is now accepted by the Commission for use in lieu of the Franchise Rule’s disclosure format.

ORDER

I. PROHIBITED REPRESENTATIONS

IT IS FURTHER ORDERED that, in connection with the advertising, telemarketing, offering for sale, licensing, contracting, sale or other promotion, in or affecting commerce, of any Franchise, Business Venture, payphone business opportunity, or income-generating product or service, Default Defendants, their successors, assigns, officers, agents, servants, employees and those persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, are hereby permanently restrained and enjoined from making, or assisting in the making of, any statement or representation of material fact that is false or misleading, whether directly or by implication, orally or in writing, including, but not limited to, any or all of the following:

A. Any false or misleading representation that:

1. consumers who purchase the payphone business opportunity will earn in excess of \$300.00 per payphone per month;
2. consumers will be provided with pre-selected, highly profitable locations for their payphones; and
3. purchasers will receive payphone equipment the purchasers have ordered and paid for within 45 days of purchase.

B. Any false or misleading representation about:

1. The income, profit, or sales volume that a purchaser is likely to achieve;
2. The income, profit or sales volume actually achieved by prior purchasers;
3. The length of time that it is likely to take a purchaser to recoup the entire purchase price or investment;

4. The independence or authenticity of any third-party references, including persons represented to be prior purchasers, that are provided to potential purchasers;
5. The amount of competition within, or a purchaser's territorial rights to, any geographic territory;
6. The availability or existence of profitable locations in a purchaser's geographic area;
7. The assistance that will be provided to purchasers, including, but not limited to, providing profitable locations or clients;
8. The terms and conditions of any assurances, refunds or guarantees of profitability that relate to any location service or company to which a purchaser is referred.

II. COMPLIANCE WITH FRANCHISE RULE

IT IS FURTHER ORDERED that, in connection with the advertising, telemarketing, offering for sale, licensing, contracting, sale or other promotion, in or affecting commerce, of a franchise, Default Defendants, their successors, assigns, officers, agents, servants, employees and those persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, are hereby permanently restrained and enjoined from violating, or assisting others to violate, any provision of the Franchise Rule as promulgated, or as it may hereinafter be amended, including, but not limited to:

- A. Failing to provide any prospective franchisee with a complete and accurate basic disclosure document containing all the information in the form required by Sections 436.1(a)(1)-(24) of the Franchise Rule, in the manner and within the time frame prescribed by the Rule;

B. Failing to provide any prospective franchisee with an earnings claim document as required by Sections 436.1(b)-(e) of the Franchise Rule, in the manner and within the time frame prescribed by the Rule;

C. Failing to include in any advertisement that states or suggests a specific level of sales, income or gross or net profits that appears in a newspaper or other medium of general dissemination, including the Internet, the disclosures required by Section 436.1(e) of the Franchise Rule, including a clear and conspicuous disclosure of the number and percentage of prior purchasers known to have earned or made the amount claimed;

D. Making any earnings claim or projection without having a reasonable basis for the claim or projection at the time such claim or projection is made, as required by Sections 436.1(b)-(e) of the Franchise Rule; and

E. Engaging in any other act or practice prohibited by the Franchise Rule, 16 C.F.R. Part 436, or failing to fulfill any obligation imposed by the Rule.

Provided, however, that if the Commission promulgates a trade regulation rule or rules that modify or supersede the Franchise Rule, in whole or part, Default Defendants shall comply fully and completely with all applicable requirements thereof on and after the effective date of any such rule; and *provided, further,* that Default Defendants may choose to comply with the disclosure requirements of the Franchise Rule now in effect by fully and completely complying with the disclosure requirements set forth in the UFOC format for so long as the current Rule remains in force.

**III. PERMANENT BAN ON SELLING FRANCHISES,
BUSINESS VENTURES BUSINESS OPPORTUNITIES
OR INCOME-GENERATING PRODUCTS OR SERVICES**

IT IS FURTHER ORDERED that the Default Defendants, whether directly or indirectly, or through any corporation, business entity or person under their control, are hereby permanently restrained and enjoined from engaging or participating in the advertising, marketing, promotion, offering for sale, or sale of any franchise, Business Venture, business opportunity or income-generating product or service.

IV. MONETARY RELIEF

A. IT IS FURTHER ORDERED that judgment in the amount of \$230,004.66 is hereby entered against defendants Advanced Public and Bianco jointly and severally, *provided, however*, that this amount shall be reduced by any amounts paid by defendant Bianco to the state of Florida as restitution pursuant to defendant Bianco's Plea Agreement with the state of Florida, dated June 20, 2000, attached hereto as Appendix A.

B. IT IS FURTHER ORDERED that judgment in the amount of \$128,160.25 is hereby entered against defendant Drucker, *provided, however*, that this amount shall be reduced by any amounts paid by defendant Bianco to the state of Florida as restitution pursuant to Bianco's Plea Agreement with the state of Florida, dated June 20, 2000, attached hereto as Appendix A.

C. The Commission may apply any or all funds received from the Default Defendants pursuant to this Default Judgment, and any interest received thereon, to a consumer redress program and to related administrative expenses; provided, however, that if the Commission determines a consumer redress program is not feasible, the Commission may pay such funds to the United States Treasury as disgorgement. The Commission shall have full and sole discretion to:

2. Determine the criteria for participation by individual claimants in any consumer redress program implemented pursuant to this Order;

3. Determine the manner and timing of any notices to be given to consumers regarding the existence and terms of such programs; and

4. Delegate any and all tasks connected with such redress program to any individuals, partnerships or corporations; and pay the fees, salaries and expenses incurred thereby from the payments made pursuant to this Default Judgment.

C. In accordance with 31 U.S.C. § 7701, Default Defendants are hereby required, unless they have done so already, to furnish to the FTC their taxpayer identifying number (social security number or employer identification number) within five (5) days of service of this Judgment upon them, which shall be used for purposes of collecting and reporting on any delinquent amount arising out of the Default Defendants' relationship with the government.

D. Defendants Bianco and Drucker are further required, unless they have done so already, to provide the FTC with clear, legible and full-size photocopies of all valid driver licenses they possess within five (5) days of service of this Judgment upon them, which will be used for collection, reporting and compliance purposes.

E. Proceedings instituted under this Paragraph are in addition to, and not in lieu of, any other civil or criminal remedies that may be provided by law, including any proceedings the Commission may initiate to enforce this Default Judgment.

V. TRANSFER OF CUSTOMER LISTS

IT IS FURTHER ORDERED that Default Defendants, their successors, assigns, officers, agents, servants, employees and those persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise are hereby permanently restrained and enjoined from selling, renting, leasing, transferring or otherwise disclosing the name, address,

telephone number, credit card number, bank account number, e-mail address, or other identifying information of any person who paid any money to Advanced Public Communications Corporation at any time prior to entry of this Order, in connection with the advertising, promotion, telemarketing, offering for sale or sale of any Franchise, Business Venture, business opportunity, or income-generating product or service; *provided, however*, that the Default Defendants may disclose such identifying information to a law enforcement agency, or as required by any law, regulation (including the limited disclosures required by the Franchise Rule) or court order.

VI. DISTRIBUTION OF ORDER

IT IS FURTHER ORDERED that, for a period of seven (7) years from the date of entry of this Order, Default Defendants shall:

A. Provide a copy of this Order to, and obtain a signed and dated acknowledgment of receipt of same from, each officer and director, each individual serving in a management capacity, all personnel involved in responding to consumer complaints or inquiries, and all sales personnel, whether designated as employees, consultants, independent contractors or otherwise, within five (5) business days after receipt of this Order, and thereafter immediately upon employing any such person, for any business that any Default Defendant directly or indirectly manages, controls, or has a majority ownership interest in, that is engaged in the sale or distribution of any Franchise, Business Venture, business opportunity, or income-generating product or service, or assisting others engaged in these activities; and

B. Maintain for a period of three (3) years after creation, and upon reasonable notice make available to representatives of the Commission, the original signed and dated acknowledgments of receipt of copies of this Order, as required in Subsection A of this Paragraph.

VII. COMPLIANCE REPORTING

IT IS FURTHER ORDERED that, in order that compliance with the provisions of this Order may be monitored:

A. For a period of seven (7) years after the date of entry of this Order, Default Defendants shall notify the Commission in writing of the following:

1. Any changes in residence, mailing addresses and telephone numbers, within ten (10) days of the date of such change;

2. Any changes in employment status (including self-employment) within ten (10) days of such change. Such notice shall include the name and address of each business that the Defendant is affiliated with or employed by, a statement of the nature of the business, and a statement of Defendant Bianco's duties and responsibilities in connection with the business or employment;

3. Any proposed change in the structure of any business entity that any Default Defendant directly or indirectly manages, controls or has a majority ownership interest in, such as creation, incorporation, dissolution (including the dissolution of any subsidiaries), assignment, proposed filing of a bankruptcy petition, or sale or merger resulting in the emergence of a successor corporation, or any other change in that entity, including a change in the corporate name or address, that may affect any compliance obligation arising out of this Order, at least thirty (30) days prior to the effective date of any such change; *provided, however*, that with respect to any proposed change in the structure of any business entity that any Default Defendant directly or indirectly manages, controls or has a majority ownership interest in, about

which he or it learns less than thirty (30) days prior to the date such action is to take place, the Defendant shall notify the Commission as soon as is practicable after learning of such proposed change;

B. One hundred eighty (180) days after the date of entry of this Order, each Default Defendant shall provide a written report to the Commission, sworn to under penalty of perjury, setting forth in detail the manner and form in which the Defendant has complied and is complying with this Order. This report shall include but not be limited to:

1. The Defendant's then current residence address, mailing addresses and telephone number(s);

2. The Defendant's then current employment and business addresses and telephone number(s), a description of the business activities of each such employer or business, the Defendant's title and responsibilities for each such employer or business;

3. A copy of each acknowledgment of receipt of this Order obtained by any Default Defendant pursuant to Paragraph VI; and

4. A statement describing the manner in which each Default Defendant has complied and is complying with Paragraphs I, through VI of this Order;

C. Upon written request by a representative of the Commission, the Default Defendants shall submit additional written reports (under oath, if requested) and produce documents on fifteen (15) days' notice with respect to any conduct that is subject to this Order;

D. For the purposes of this Order, the Default Defendants shall, unless otherwise directed by a representative of the Commission, identify all written notifications to the FTC as provided in

reference to “Advanced Public Communications Corp., et al., U.S. District Court, Southern District of Florida, Case No. 00-00515-CIV, FTC No. X000024” and mail them to:

Associate Director, Division of Marketing Practices
Federal Trade Commission
600 Pennsylvania Avenue N.W., Room 238
Washington, DC 20580

E. For the purposes of this Paragraph, “employment” includes the performance of services as an employee, consultant, or independent contractor; and “employers” include any individual or entity for whom any Default Defendant performs services as an employee, consultant, or independent contractor; and

F. For purposes of the compliance reporting required by this Paragraph, the Commission is authorized to communicate directly with each Default Defendant.

VIII. MONITORING COMPLIANCE OF SALES PERSONNEL

IT IS FURTHER ORDERED that, in connection with any business that any Default Defendant directly or indirectly manages, controls or has a majority ownership interest in, that is engaged in the sale or distribution of any Franchise, Business Venture, business opportunity or income-generating product or service, or assisting others engaged in these activities, the Default Defendants and their successors, assigns, officers, agents, servants, employees and those persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, are hereby permanently restrained and enjoined from:

A. Failing to take reasonable steps sufficient to monitor and ensure that all employees and independent contractors engaged in sales or other customer service functions comply with Paragraphs

Is, II and III of this Order. Such steps shall include adequate monitoring of sales presentations or other calls with customers, and shall also include, at a minimum, the following:

1. Listening to the oral representations made by persons engaged in sales or other customer service functions;

2. Establishing a procedure for receiving and responding to consumer complaints; and

3. Ascertaining the number and nature of consumer complaints regarding transactions in which each employee or independent contractor is involved;

B. Failing promptly to investigate fully any consumer complaint received by any business to which this Provision applies; and

C. Failing to take corrective action with respect to any sales person whom any Default Defendant or his/its representative determines is not complying with this Order, which may include training, disciplining, and/or terminating such sales person;

Provided, however, that this Provision does not authorize or require Default Defendants to take any action that violates any federal, state, or local law.

IX. RECORD KEEPING PROVISIONS

IT IS FURTHER ORDERED that, for a period of seven (7) years from the date of entry of this Order, in connection with any business that any Default Defendant directly or indirectly manages, controls or has a majority ownership interest in, that is engaged in the sale or distribution of any Franchise, Business Venture, business opportunity, or income-generating product or service, or assisting others engaged in these activities, the Default Defendant, his/its successors, assigns, officers, agents, servants, employees and those persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise are hereby restrained and enjoined from failing to create and maintain for a period of three (3) years following the date of their creation, unless otherwise specified:

A. Books, records and accounts that, in reasonable detail, accurately and fairly reflect the cost of goods or services sold, revenues generated, and the disbursement of such revenues;

B. Records containing the name, address, telephone number, social security number and alias(es) and/or phone name(s) of each person employed by the Defendant in any business engaged in the sale or distribution of any Franchise, Business Venture, business opportunity, or income-generating product or service, in any capacity, including as an independent contractor, that person's job title or position, the date upon which the person commenced work, and the date and reason for the person's termination, if applicable; and shall retain such records during the employment of any person, and for a period of two (2) years after the date of that person's termination;

C. Records containing the name, address, telephone number, quantity of goods or services purchased, and a description of the goods or services purchased, for all consumers to whom

the business has sold, invoiced or shipped any Franchise, Business Venture, business opportunity, or income-generating product or service;

D. Records that reflect, for every written or oral consumer complaint or refund request received by the Default Defendant, his/its successors, assigns, officers, agents, servants, employees and those persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, whether directly or indirectly or through any third party: (1) the consumer's name, address, telephone number; (2) the dollar amount paid by the consumer; (3) the written complaint or refund request, if any; (4) the basis of the complaint or refund request, including the name of any salesperson complained about; (5) the nature and result of any investigation conducted concerning the complaint or refund request; (6) each response and the date of the response to the complaint or refund request; and (7) any final resolution of the complaint or refund request, and the date of the resolution; and (8) in the event of a denial of a refund request, the reason for the denial; and

E. Copies of all sales scripts, training materials, advertisements, or other marketing materials utilized, which shall be retained for three (3) years after the last date of their dissemination or use.

X. ACCESS TO BUSINESS PREMISES

IT IS FURTHER ORDERED that for a period of seven (7) years from the date of entry of this Order, for the purposes of determining or securing compliance with its provisions, Default Defendants, their successors, assigns, officers, agents, servants, employees and those persons in active concert or participation with them who receive actual notice of this Order by personal service or

otherwise shall grant to representatives of the Commission, within three (3) business days of receipt of written notice from the Commission:

A. Access during normal business hours to any office or facility storing documents of any business that any Default Defendant directly or indirectly manages, controls, or has a majority ownership interest in, that is engaged in the sale or distribution of any Franchise, Business Venture, business opportunity, or income-generating product or service, or assisting others engaged in such activities. In providing such access, Default Defendants shall permit representatives of the Commission to inspect and copy all documents relevant to any matter contained in this Order; and shall permit representatives of the Commission to remove such documents for a period not to exceed five (5) business days so that the documents may be inspected, inventoried, and copied; and

B. The opportunity to interview, without restraint or interference, officers, directors, employees, contractors, and agents, including all personnel involved in responding to consumer complaints or inquiries and all sales personnel, whether designated as employees, consultants, independent contractors or otherwise, of any business to which Subsection A of this Paragraph applies, regarding compliance with the provisions of this Order. Any person interviewed may have counsel present.

Provided, however, that upon application of the Commission for good cause shown, the Court may enter an *ex parte* order granting immediate access to any Default Defendant's business premises for the purposes of inspecting and copying all documents relevant to any matter contained in this Order.

XI. AUTHORITY TO MONITOR COMPLIANCE

IT IS FURTHER ORDERED that the Commission is authorized to monitor Default Defendants' compliance with this Order by all lawful means, including but not limited to the following:

A. Without further leave of Court, to obtain discovery from any person (including a Defendant) in the manner provided by Chapter V of the Federal Rules of Civil Procedure, Fed. R. Civ. P. 26-37, including the use of compulsory process pursuant to Fed. R. Civ. P. 45;

B. To use representatives posing as consumers or suppliers to any Default Defendant, his/its employees, or any other entity managed or controlled in whole or in part by any Default Defendant, without the necessity of identification or prior notice; and

C. Nothing in this Order shall limit the Commission's lawful use of compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. § 49 and 57b-1, to investigate whether any Default Defendant has violated any provision herein or Section 5 of the FTC Act, 15 U.S.C. § 45, or any applicable rule or regulation promulgated and enforced by the Commission, including the Franchise Rule, 16 C.F.R. § 436.

XII. RETENTION OF JURISDICTION

IT IS FURTHER ORDERED that this Court shall retain jurisdiction of this matter for the purpose of enabling the parties to apply to the Court at any time for such further orders and directives as may be necessary or appropriate for the interpretation or modification of this Order, for the enforcement of compliance therewith, or for the punishment of violations thereof.

XIII. ENTRY OF THIS FINAL JUDGMENT

IT IS FURTHER ORDERED that there being no just reason for delay of entry of this judgment, and, pursuant to Rules 54(b) and 55 of the Federal Rules of Civil Procedures, the Clerk shall enter this Order immediately.

DONE AND ORDERED in Chambers at Miami, Florida, this _____
day of _____, 2000.

Dated: _____

URSULA UNGARO-BENAGES
UNITED STATES DISTRICT JUDGE